contrivance within the definition of "copy" since copy is defined to mean "a reproduction of a work in written form, in the form of a recording or cinematograph film or in any other material form." The penal section 15 does not speak of copy; it refers to infringing copy.

Even section 15(5) which reads:

"(5) For the purpose of this section, an 'infringing copy' means an article which if made in Malaysia constitutes an infringement of copyright under this Act, and if made outside Malaysia would constitute an infringement of copyright under this Act if the making thereof had taken place in Malaysia."

on a proper and reasonable construction, must mean that there is in this sub-section no extension of "infringing copy" to include a contrivance.

There is therefore in the Act read as a whole a clear distinction between an infringing copy and a contrivance.

The problem thus is squarely the construction of section 15(1) and, though not without regrets, I cannot on a proper and reasonable construction avoid the conclusion that in all probability, and perhaps unwittingly, Parliament had failed to provide a punishment for the offence of possession of contrivances for the making of infringing copies of copyright materials.

The appeal from the sentences must succeed. The fines if paid are to be refunded. The conviction stands.

Order accordingly.

Solicitors: *Augustin-Negrin & Co.*

SELVARAJAH & ANOR. v. OFFICIAL ADMINISTRATOR & ANOR.

[O.C.J. (Abdul Hamid J.) June 28, 1977]

[Kuala Lumpur — Civil Suit No. 2029 of 1976]

Practice & Procedure — Official Administrator — Whether he could be sued — Probate and Administration Ordinance, 1959, s. 39 — R.S.C. 1957, O. 16 r. 48.

The Official Administrator sued as representative of the Estate of one M. (deceased), as the first defendant, asked that the writ against him be set aside on the ground that he had no capacity to be sued.

Held, allowing the application: mere vesting of the property in the Official Administrator does not place him in such a capacity that he can be sued.

Cases referred to:-

(1) *Comptroller of Income Tax* v. *Tan Tai Min* [1965] 1 M.L.J. 255.

(2) *K.A.L.R.M. Karuppan Chettiar* v. *Subramaniam Chettiar The Official Administrator, F.M.S. Palaniappa Chettiar Muthukaruppan Chettiar* [1933] M.L.J. 226.

CIVIL SUIT.

Sri Ram for the first defendant.

Paramjit Singh Gill for the plaintiffs.

Abdul Hamid J.: The Official Administrator sued as representative of the Estate of Mohamed Khiar Bakri bin Mokhtar (deceased), as the first defendant, is asking that the amended writ dated September 6, 1976, amended on December 4, 1976 be set aside as against him on the ground that he has no capacity to be sued.

An affidavit in support of the application affirmed by one Chang Weng Wai, an assistant claims manager of Safety Life and General Insurance Sendirian Berhad, claims that at the time the writ was issued there was no administrator or other personal representative in respect of the Estate of the deceased.

The order appointing the Official Administrator as representative of the Estate of the deceased was made on November 22, 1976 and a further order to amend the writ was also made.

Encik Paramjit Singh Gill solicitor for the plaintiffs/respondents in reply states that a specially indorsed writ was filed on September 6, 1976. This was followed by an application by way of summons-in-chambers on September 13, 1976 asking for the appointment of the Official Administrator to represent the estate of the deceased in accordance with Order 16 rule 48 of the Rules of Supreme Court.

It is the respondents' contention that by virtue of section 39 of the Probate and Administration Ordinance, 1959 the movable and immovable property of the person who dies intestate until administration is granted vests in the Official Administrator and the suit commenced against the Official Administrator is properly commenced even though the administration of the estate has not been granted to substitute the Official Administrator with the administrator.

The respondents also maintain that the court order made on November 22, 1976 was properly made as the summons was filed within time and not barred by limitation.

In support of the application Encik Sri Ram cited the case of *Comptroller of Income Tax* v. *Tan Tai Min*[1] where it was held that the defendant was not the administrator, even though he had obtained an order for grant of letters of administration but had not extracted it, and action could not be brought against him as administrator. The defendant's application to strike out the writ of summons was allowed.

Turning to section 39 of the Probate and Administration Ordinance, 1959, relied upon by the respondents, Encik Sri Ram cited the case of *K.A.L.R.M. Karuppan Chettiar* v. *Subramaniam Chettiar The Official Administrator, F.M.S. Palaniappa Chettiar Muthukaruppan Chettiar*[2] to show that the Official Administrator is merely placed in the position of a receiver of the intestate's estate pending the grant of letters of administration and he cannot be sued by virtue of this section alone.

Encik Sri Ram then pointed out that section 30 of the Probate and Administration Enactment 1930 (Cap. 8) is substantially similar to section 30 of the Probate and Administration Ordinance, 1959.

In consideration I find merit in this application. It would seem clear that mere vesting of the property in the Official Administrator does not place him in such a capacity that he can be sued and for this reason I allow the application and order that the writ against the first defendant be set aside with costs.

Application allowed.

Solicitors: *Sri Ram, Chan & Chia; Gill & Tang.*